

**CHAPTER NO. 278**

**HOUSE BILL NO. 914**

**By Representative Kisber**

**Substituted for: Senate Bill No. 1539**

**By Senator Rochelle**

AN ACT to amend Tennessee Code Annotated, Title 48, Chapter 2, relative to securities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-2-102, amended by adding the following language as a new numbered subdivision (1) and by renumbering the remaining subdivisions accordingly:

"Accredited investor" means accredited investor, as that term is defined in Rule 501 of Regulation D under the Securities Act of 1933 (17 C.F.R. § 230-501), as amended.

SECTION 2. Tennessee Code Annotated, Section 48-2-103(b), is amended by deleting subdivision (9) in its entirety and by substituting instead the following:

(9) Any transaction involving the issuance of a security:

In connection with a stock bonus plan requiring payment of no consideration other than services; or

In connection with a stock bonus, pension, profit sharing, savings, thrift, or retirement plan for employees or self-employed individuals qualified under § 401 of the Internal Revenue Code of 1954, as amended, or individual retirement accounts qualified under § 408 of the Internal Revenue Code of 1954, as amended; or

In connection with a transaction that meets the following requirements:

The offering meets the requirements of Rule 701 of the Securities Act of 1933 (17 C.F.R. § 230.701), as amended;

The offering is exempt from the provisions of § 5 of the Securities Act of 1933, as amended;

The issuer files with the commissioner no later than fifteen (15) days after the first sale in this state a notice of transaction, on a form adopted by the commissioner, accompanied by a consent to service of process, and a non-refundable filing fee of five hundred dollars (\$500); and

No commission, discount, or other remuneration is paid or given in connection with any transaction in this state under this subsection unless paid or given to a broker-dealer or agent registered under this part;

provided that the issuance of any such security representing an interest in a collective investment fund shall be exempt only if such security is issued

pursuant to a plan established and administered by a bank organized under the laws of the United States or any bank or trust company organized and supervised under the laws of any state of the United States or sponsored by any investment company registered under the Investment Company Act of 1940, as amended, or sponsored by any insurance company licensed to do business in this state;

SECTION 3. Tennessee Code Annotated, Section 48-2-103(b), is further amended by adding the following new subdivision:

(14) Any offer or sale of a security by an issuer in a transaction that meets the following requirements:

(A) Sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors. An issuer's belief under this subdivision shall be deemed reasonable if the issuer: obtains from such a person (i) a written certification certifying that the person has reviewed the definition of "accredited investor" in § 48-2-102(1), and certifying that such person meets the definition of "accredited investor" in § 48-2-102(1); (ii) obtains from such person such other information as the commissioner may by rule require; and (iii) maintains, for a period of not less than three (3) years from the date of sale, the written certification and other information required by the commissioner.

(B) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for resale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:

(i) The resale is pursuant to a registration statement effective under Section 48-2-105 or Section 48-2-106;

(ii) The resale is to an accredited investor; or

(iii) The resale is to an institutional investor in an exempt transaction pursuant to subdivision (b)(3).

(C) The exemption under this subdivision is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.

(D)

(i) The exemption under this subdivision is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(a) Within the past five (5) years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission; or

(b) Within the past five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit; or

(c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

(d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five (5) years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(ii) Subitem (i) of item (D) is inapplicable if any of the following applies:

(a) The party subject to the disqualification is licensed or registered to conduct securities business in the state in which the order, judgment, or decree creating the disqualification was entered against the party described in subitem (i).

(b) Before the first offer is made under this exemption, the state securities administrator, or the court or regulatory authority that entered that order, judgment, or decree, waives the disqualification.

(c) The issuer did not know and, in the exercise of reasonable care based on reasonable investigation, could not have known that a disqualification from the exemption existed under subitem (i).

(E) A general announcement of the proposed offering may be made by any means; provided, the general announcement shall include only the following information, unless additional information is specifically permitted by the commissioner:

(i) The name, address, and telephone number of the issuer of the securities;

(ii) The name, a brief description, and price of any security to be issued;

(iii) A brief description of the business of the issuer;

(iv) The type, number, and aggregate amount of securities being offered;

(v) The name, address, and telephone number of the person to contact for additional information; and

(vi) A statement that:

(a) Sales will be made only to accredited investors;

(b) No money or other consideration is being solicited or will be accepted by way of this general announcement; and

(c) The securities have not been registered with or approved by any state securities administrator or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

(F) The issuer, in connection with an offer, may provide information in addition to the general announcement described in item (E), provided that either of the following applies:

(i) The information is delivered through an electronic database that is restricted to persons who are accredited investors; or

(ii) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(G) No telephone solicitation shall be conducted, unless prior to placing the telephone call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(H) Dissemination of the general announcement described in item (E) to persons that are not accredited investors does not disqualify the issuer from claiming an exemption under this subdivision.

(I) No later than fifteen (15) days after the first sale in this state, the issuer shall file with the commissioner a notice of transaction, on a form adopted by the commissioner, accompanied by a consent to service of process, a copy of the general announcement, if one is made regarding the proposed offering, and a non-refundable filing fee of five hundred dollars (\$500).

SECTION 4. Tennessee Code Annotated, Section 48-2-103(b)(6), is amended by deleting the language "subdivisions b(3) and (12)" from the first sentence of that subdivision and by substituting instead the language "subdivision b(3)".


SECTION 5. This act shall take effect July 1, 2001, the public welfare requiring it.

PASSED: May 10, 2001

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 22<sup>nd</sup> day of May 2001

  
DON CONQUIST, GOVERNOR